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18 Attorneys for Plaintiff OWEN DIAZ

19
20 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

21 DEMETRIC DI-AZ, OWEN DIAZ, and
22 LAMAR PATTERSON,

23 Plaintiffs,

24 v.

25 TESLA, INC. dba TESLA MOTORS, INC.;
CITISTAFF SOLUTIONS, INC.; WEST
26 VALLEY STAFFING GROUP;
CHARTWELL STAFFING SERVICES, INC.;
and DOES 1-50, inclusive,

27 Defendants.

28 Case No. 3:17-cv-06748-WHO

**DECLARATION OF BRYAN
SCHWARTZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES**

1 **DECLARATION OF BRYAN SCHWARTZ, ESQ.:**

2 I, Bryan Schwartz, Esq., hereby declare as follows:

3 1. I am an attorney at law duly licensed to practice before all courts of the State of
4 California. This declaration is submitted in support of Plaintiff Owen Diaz's request for
5 attorneys' fees.

6 2. I am the principal in Bryan Schwartz Law, P.C., a plaintiffs'-side civil rights and
7 employment firm, where I concentrate on litigating employment matters on behalf of workers
8 throughout California.

9 3. I have been a member of the Bar for over 20 years, and have dedicated my career
10 to fighting for workers' rights. I graduated Berkeley Law (then called Boalt) in 2000, after
11 graduating *magna cum laude* from Cornell University and spending time working at the U.S.
12 Equal Employment Opportunity Commission. Before founding my own firm in 2009, I founded
13 and led the San Francisco office of Nichols Kaster, LLP. Previously, I practiced with the
14 Washington, D.C.-based firm of Passman & Kaplan, P.C. I also clerked for the late Hon.
15 Franklin Van Antwerpen, formerly a member of the Third Circuit Court of Appeal and the
16 Eastern District of Pennsylvania. My cases have been featured in prominent publications such as
17 the *New York Times*, *Washington Post*, and the *Wall Street Journal*, as well as publicized through
18 the media on outlets such as CNN, National Public Radio and MSNBC.

19 4. I am a member of the Board of Directors of Legal Aid at Work and FAIR, both
20 non-profits dedicated to workers' rights. I am a past Chair of the State Bar of California's Labor
21 and Employment Law section (now affiliated with the California Lawyers Association), which
22 has over 7,500 members, and a past Executive Board member of the California Employment
23 Lawyers Association (CELA). I have chaired the Annual Meeting of the Labor and Employment
24 Law Section, the State Bar's Advanced Wage and Hour Conference, and Legal Aid at Work's
25 Annual Gala. I have appeared as *amicus curiae* before the California Supreme Court on behalf
26 of CELA many times, including in *Brinker Restaurant Corp. v. Sup. Ct.*, *Kirby v. Immoos Fire*
27 *Protection*, and *Duran v. US Bank*. I am a regular speaker on employment law topics, having
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1 presented frequently to the State Bar, the National Employment Lawyers Association, CELA,
2 NPR's "Your Legal Rights" radio show, the American Bar Association's Labor and Employment
3 Law Section and Commission on Disability Rights, the San Francisco Trial Lawyers
4 Association, and Judicial and Mediation Services (JAMS). I have often published articles about
5 employment law in the *California Labor and Employment Law Review*, *Plaintiff Magazine*, the
6 *Daily Journal*, and in other media. I have been rated one of the top labor and employment
7 lawyers in California every year by the *Daily Journal* and *Super Lawyers*, along with Lawyer of
8 the Year and other honors from Best Lawyers (associated with *U.S. News and World Report*), the
9 Attorney Advocate of the Year award from Wage Justice, the Meritorious Service Award from
10 Legal Aid at Work, and repeated recognition from *Lawdragon*.

11 5. As a result of my experience and my interactions with other employment
12 attorneys nationwide, in California, and especially in the Bay Area, I am very familiar with the
13 rates charged by other plaintiff's employment attorneys of varying levels of skill, experience,
14 and reputation.

15 6. Prospective plaintiffs in employment cases are almost require lawyers to handle
16 their cases on a contingency fee basis, particularly if they are litigated through trial. Lawyers
17 who want to obtain and handle civil rights cases for plaintiffs have to be willing to take cases,
18 including ones with high risks, on a contingent fee basis. For this reason, victorious plaintiffs'
19 attorneys must, when successful, receive fee awards with a multiplier, in order to survive and
20 thrive in this highly competitive legal market. Otherwise, there will be an inadequate incentive
21 for attorneys to take these cases, which would only pay routine rates but with exceptional risks
22 and long delays, which in turn means that many cases affecting the public interest will go
23 unprosecuted. Losing and recovering no fees, or recovering only steeply discounted fees, is not
24 just a hypothetical risk – I know from personal experience (as recently as this past month), it
25 happens, even when we feel our case is just and we work hundreds or even thousands of hours
26 on a matter. As such, when we achieve a major victory, which is never certain, and always
27 comes after a time (sometimes many years) receiving no compensation, we need to receive the
28

1 “upside” multiplier for the very real risks we have taken in contingency litigation, to be able to
2 keep our civil rights law practices running.

3 7. I am informed of the facts of this case and the excellent result obtained at trial,
4 twice, for the Plaintiff. The first trial victory was historic and the second victory hard-fought and
5 important, with this Court making findings earlier this month both regarding the “grievously
6 reprehensible” “endemic racism at the Tesla factory,” Tesla’s “repeated failure to rectify it,” and
7 Tesla counsel’s inexcusable, intentional misconduct seeking to defend the company’s horrific
8 civil rights violations. I have been co-counsel with Plaintiff’s counsel California Civil Rights
9 Law Group (“CCRLG”) in the *Vaughn v. Tesla* class action pending in Alameda County
10 Superior Court since 2016, and so am acutely aware of the necessary hard work and diligence
11 required to obtain such a result, and believe it warrants a significant fee award. From my own
12 experiences litigating against Tesla, I have specific knowledge about Tesla’s litigation tactics. In
13 my experience, Tesla over-litigates cases in an effort to make it more difficult to obtain
14 discovery, creating obstacles to obtaining even basic discoverable information, such as witness
15 names and contact information. This means that plaintiffs’ counsel litigating against Tesla needs
16 to be even more diligent and spend more time litigating what could ordinarily be simple matters.
17 Based upon my experiences litigating against Tesla, it is not surprising that the lawyers in this
18 matter had to spend thousands of hours litigating the case through two trials. Furthermore, in my
19 experience litigating numerous cases with CCRLG, Altshuler Berzon, Mr. Collier and Mr.
20 Alexander, they are efficient in the time they spend doing tasks and act strategically to maximize
21 the efficiencies in a case. Indeed, plaintiffs’ lawyers operating on a contingency basis have no
22 reason to spend extra time - every hour we spend, we risk never being paid, or being paid only
23 after a long delay. We must only always do enough to move a case forward and obtain a desired
24 outcome, and that is what I believe Plaintiff’s counsel has done here, having to fight for two
25 impressive verdicts for Mr. Diaz.

26 8. My own customary rate is \$925 per hour, paid by those hourly clients I do have,
27 and I am many years junior in the practice to Plaintiffs’ counsel Michael Rubin, Bernard
28 Alexander and Larry Organ. My customary hour rates have been awarded or used as a basis for a

1 lodestar cross-check (in a collective/class context) dozens of times by courts in Northern
 2 California and around the country, often with a multiplier (for example, I was awarded
 3 \$900/hour in 2021, plus a multiplier, by Alameda County Superior Court). Based on my
 4 familiarity with prevailing market rates for work of similar complexity in the Bay Area legal
 5 market, I know that my hourly rate is well within the prevailing market rate for work of similar
 6 complexity performed by attorneys of similar skill and experience.

7 9. I understand that the hourly rates sought in this case by the various attorneys for
 Plaintiff are: (a) Michael Rubin: \$1,275; (b) J. Bernard Alexander, III: \$1,200; (c) Lawrence
 9 Organ: \$975; (d) Marqui Hood: \$900; (e) Corinne Johnson \$825; (f) Dustin Collier: \$750; (g)
 10 Navruz Avloni: \$725; (h) Jonathan Rosenthal: \$650; (i) Britt Karp: \$575; (j) Drew F. Teti: \$550;
 11 (k) Cimone Nunley: \$500; and (l) Elizabeth R. Malay: \$400. Based on my personal experience
 12 and observations, as well as my familiarity with the prevailing market rates for work of similar
 13 complexity in the Bay Area market and my knowledge and understanding of these attorneys'
 14 respective reputations in the community, it is my professional opinion that all of these rates are
 15 reasonable and well within the prevailing market range for work of similar complexity to the work
 16 done in this matter by attorneys of similar skill, experience, reputation and abilities. I have
 17 personally co-counseled with almost all of these practitioners, have known many of them for over a
 18 decade, and consider them among the finest in the field.

19 10. In particular, Michael Rubin is the leading legal mind representing employment law
 plaintiffs in California, with too many Supreme Court victories, "California Lawyer of the Year
 21 Awards," and other accolades to count. His \$1,275/hour is not only well-justified, it is low – there is
 22 no attorney in California whose services are more valuable than Michael Rubin's, in my opinion. I
 23 seek to consult Mr. Rubin on every case I have that has any appellate matter pending or likely.
 24 Having worked also with his colleagues Corinne Johnson and Jonathan Rosenthal, I can say they
 25 are also exceptionally skilled attorneys and their rates are reasonable.

26 11. Bernard Alexander is one of the top trial lawyers for workers in California, and is
 27 routinely recognized as such by virtually every publication and organization that bestows such
 28 honors, such as the *Daily Journal* and the Consumer Attorneys Association of Los Angeles

1 (CAALA). I recently co-counseled a matter with Mr. Alexander where we won a \$2 million jury
 2 verdict for a deaf worker who made less than \$20/hour who resigned his employment after getting
 3 inadequate reasonable accommodations – and that is not even one of Mr. Alexander’s bigger jury
 4 verdicts *this year*. We have served together for more than 15 years on the Boards and committees of
 5 CELA and FAIR, and so I know not only Mr. Alexander’s deep commitment to workers’ rights, but
 6 that he is considered a leader in the field. His \$1,200/hour is also clearly reasonable, as is the rate of
 7 Britt Karp at his firm.

8 12. Larry Organ is one of my most frequent collaborators because of his great talent as a
 9 litigator and trial lawyer passionately representing workers. We have succeeded in many cases
 10 together, including a jury verdict and many cases that settled shortly before trial, or earlier. The
 11 \$975/hour he seeks for his extraordinary work in this matter is certainly below market rate,
 12 considering that he has many more years of experience than I do, and my rate is \$925/hour. Mr.
 13 Organ is a top trial lawyer in California and in the country as well, not only evidenced by the
 14 historic trial result in this case, but such pioneering civil rights cases as *Weeks v. Baker & McKenzie*
 15 and *Gober v. Ralphs Grocery*. Mr. Organ deservedly won the National Trial Lawyers’ Lawyer of
 16 the Year award for his work on this case. I also know the skill of Marqui Hood, Navruz Avloni, and
 17 Cimone Nunley, of Mr. Organ’s firm, and their claims rates are also reasonable.

18 13. I have also known Dustin Collier for 15+ years, since he was a law student, and
 19 have co-counseled a successful class action with him. I know that his passion is trying workers’
 20 rights cases and he has had great success at it, and also in preserving his major victories in
 21 precedent-setting appellate wins, such as in *Sargent v. Board of Trustees*. His \$750/hour rate is
 22 also low, compared with market rates for someone with his track record of success and his level
 23 of experience.

24 14. I do not personally know Drew Teti or Elizabeth Malay, but their rates are
 25 reasonable for this case based upon their years of experience.

26 15. The *Diaz* case will have an impact not only on my *Vaughn* case, but upon civil
 27 rights enforcement throughout California and nationwide, and is an exceptionally important case
 28

for demonstrating the strong public policy against workplace racism. The Court should award the full fees sought for Plaintiff's counsel's exceptional work in obtaining this outcome.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and is based on my personal knowledge. If called upon to do so, I could and would testify competently to the matters stated herein.

Executed this 25th day of October 2023 in Sonoma, California.

/s/ *Bryan Schwartz*

Bryan Schwartz, Esq.